

FIRST AMENDMENT TO PERFORMANCE AGREEMENT

THIS FIRST AMENDMENT TO PERFORMANCE AGREEMENT is made and entered into on the ____ day of April, 2021, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter “the County”), a political subdivision of the Commonwealth of Virginia, **WILLOWTREE, INC.** (hereinafter “the Company”), a Virginia corporation, and the **ALBEMARLE COUNTY ECONOMIC DEVELOPMENT AUTHORITY** (hereinafter “the Authority”), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Company received a grant from the Commonwealth of Virginia pursuant to the Commonwealth’s Development Opportunity Fund Performance Agreement dated September 18, 2018; and

WHEREAS, the County and the Authority entered a Performance Agreement dated September 18, 2018, with the Company to provide certain match grants to the Commonwealth’s Development Opportunity Fund Performance Agreement upon terms and conditions; and

WHEREAS, the occurrence of the COVID-19 pandemic and resulting disaster declarations have made it impossible for the Company to achieve the Workforce Location Commitment through no fault of its own; and

WHEREAS, the Company has undertaken legal obligations related to the size of its leasehold and duration of tenancy that greatly exceed those required by the Performance Agreement with the County and the Authority and remains committed to attaining the original Workforce Location conditions when the effects of the pandemic recede, legal restrictions are lifted, and prudence and workplace safety best practices permit; and

WHEREAS, the Company remains committed to supporting and creating economic vitality to the Broadway Street corridor by maintaining a significant workforce and its worldwide headquarters in Albemarle County;

WHEREAS, the County and the Authority recognize that the stimulation of additional tax revenue has been realized and the continued expected increase in economic activity remain valid public purposes for the expenditure of public funds and continue as the animating purpose of the Commonwealth’s Development Opportunity Fund Performance Agreement and the Performance Agreement with the County and the Authority.

NOW THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this First Amendment to Performance Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

Section 1. Amendment of Section 1; Lease Obligation. The parties agree the Company began leasing and occupying the Property as July 1, 2020. The Lease Obligation shall continue for at least five (5) years from that date. All other terms and conditions related to the Lease Obligation remain unchanged and in full force and effect.

Section 2. Amendment of Section 1; Workforce Location Commitment. The parties agree the Company will satisfy the Workforce Location Commitment under the following circumstances:

- a. **Workforce Residency Requirement:** For the years 2020, 2021, and 2022, at least seventy-five percent (75%) of the Company's full-time Virginia employees must reside in one of the following Virginia localities: Albemarle, Buckingham, Fluvanna, Greene, Nelson, or Charlottesville;
- b. **Certification of Workforce Residency:** Prior to the County or the EDA making any match grant payment under the Agreement, as amended herein, the Company's CEO or CFO must attest in writing by February 28th of each year (May 28, 2021, for year 2020) to the County's Department of Finance and Budget, the percentage of full-time Virginia employees residing in the noted jurisdictions as of the last day of the prior calendar year and must provide the numbers forming the basis of the calculation. Grant payments will not be made until the County receives the attestation; and
- c. **Workforce Onsite Location Requirement:** For the year 2022, in addition to the Workforce Residency Requirement, at least fifty (50%) percent of the Company's full-time Virginia employees must be assigned to work at the Property as their designated home office. In the years 2023 and 2024, at least seventy-five percent (75%) or 270, whichever is lower, of its full-time Virginia employees must be assigned to work at the Property as their designated home office; and
- d. **Certification of Workforce Onsite Location Requirement:** For years 2022, 2023, and 2024, before the County or the EDA disburses any match grant payment under the Agreement, as amended herein, the Company's CEO or CFO must attest in writing by February 28th of each year to the County's Department of Finance and Budget, the percentage of full-time Virginia employees assigned to work at the Property as their designated home office as of the last day of the prior calendar year and must provide the numbers forming the basis of the calculation. Grant payments will not be made until the County receives the attestation.

- e. **Administrative Extension:** The County Executive may extend the Workforce Residency Requirement from year to year if legal, public health, and liability restrictions related to the COVID-19 pandemic continue to prevent the Company from locating a sufficient number of employees at Property or the Company can demonstrate that employee health, safety, and welfare and best employment practices militate against from locating a sufficient number of employees at the Property. In deciding whether to extend the Workforce Residency Requirement, the County Executive must consider and weigh heavily officially published guidance from the United States Center for Disease Control and the United States Occupational Safety and Health Administration.

Section 3. Payment Schedule: Upon the Company's satisfaction of terms and conditions, the County and the Authority will disburse to the Company the Real Estate and BPOL tax refund grants in one annual payment as follows:

- a. 2020 Tax Payments: County payment to Authority due by June 30, 2021. Authority payment to the Company due within thirty days after receipt.
- b. 2021 Tax Payments: County payment to Authority due by June 30, 2022. Authority payment to the Company due within thirty days after receipt.
- c. 2022 Tax Payments: County payment to Authority due by June 30, 2023. Authority payment to the Company due within thirty days after receipt.
- d. 2023 Tax Payments: County payment to Authority due by June 30, 2024. Authority payment to the Company due within thirty days after receipt.
- e. 2024 Tax Payments and Final Payment: County payment to Authority due by June 30, 2025. Authority payment to the Company due within thirty days after receipt.

Section 4. Incorporation: All other terms, conditions, and obligations of the Performance Agreement dated September 18, 2018, a true copy of which is attached, are incorporated fully herein and made a part of this Amendment to Performance Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY,
VIRGINIA**

By: _____
Donald D. Long, Chair

Date: _____

WILLOWTREE, INC.

By: _____
Tobias Dengel, CEO

Date: _____

Approved to Form & Substance:

Albemarle County Attorney